

Kluwer Copyright Blog

EU Commissioner Kroes: Our single market is crying out for copyright reform

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“Every day citizens here in the Netherlands and across the EU break the law just to do something commonplace. And who can blame them when those laws are so ill-adapted.”

Speech Neelie Kroes, vice-president of the European Commission, delivered at the opening of Information Influx, the 25th anniversary conference of the Institute for Information Law (IViR) on 2-4 July 2014 in Amsterdam.

“Happy birthday to you all at the Institute for Information Law. I would sing you “Happy Birthday”. But technically I think the song is still under copyright — I don’t want to have to pay the royalty.

Today the debate about information, innovation, and intellectual property can be complex, personal, and heated. Our duty as lawmakers is to find a balance between creators and the justified interests of society. Yet that balance is changing. Transforming technology is changing how people use and re-use information. And disrupting a longstanding legal framework.

Already today that framework seems dated — if not irrelevant. Every day that passes it becomes more so. To debate these issues objectively we need a forum both solid and open-minded - without political constraints, or vested interests.

So I welcome that the Institute for Information Law continues to tackle these issues. I thank you for all you have done, many studies in many areas of the digital economy.

And I hope your input on copyright, too, will play an important role.

I start from principles. What should a sound EU copyright system do?

First, it needs to promote creativity and innovation. To encourage and stimulate innovative new works, new opportunities, new channels, new models. To enable the research that leads to new discoveries.

Second, it must remunerate and reward creators. That's not just about fairness. We expect creators to invest their time and talent. Of course reward, recognition, remuneration are essential: without them, the creative tap would fast stop flowing. I have always believed that.

But the current copyright system does not do it well. Not nearly well enough. Many creators scrimp by on a pittance, unable to find their full audience, unable to share or sell their works as widely or creatively as they want. Limitations and obstructions do nothing for creativity.

Third - it should enable a digital single market. Removing the barriers that get between artists and their audience, that prevent innovation, that shatter economies of scale. The EU's leaders are signed up to a full, vibrant digital single market. So is President-designate Juncker. Now they need to act on their ambitions - copyright is a major, essential part.

And last: perhaps most importantly, the legal framework needs to take account of the needs of society. Users' interest and expectations matter alongside creators' rights. Rules cannot be impractical, uncertain, or unreasonable for ordinary users.

How do you find this balance? That clearly changes: with technology and over time. Today's world is a very different one to that of the 2001 EU Copyright Directive. With new expectations for consumers, new opportunities for creators. new tools from social media to big data.

Every day citizens here in the Netherlands and across the EU break the law just to do something commonplace. And who can blame them when those laws are so ill-adapted. Every day, startups, small businesses, scientists abandon innovative ideas because the legal fees are too great.

Every day, people bypass the copyright system using alternatives like open source: something which can lead to huge creativity, innovation, and richness.

Copyright risks becoming an irrelevance.

The Internet gives enormous opportunities for artists and consumers. More direct access to a wider audience, and a wider range of content. New ways to share, spread, sell. New ways to reward and recognise. New ways for audiences to appreciate - getting what they want, when they want it. A good copyright system would help us achieve that. Today's does not.

Some examples.

When uncertainty prevents people remixing or creating their own content, how does that boost creativity? When teachers are afraid to share teaching materials online, how does that help our society? When a European Video-on-Demand provider tries to expand to new markets, but gives up because clearing copyright is so catastrophically cumbersome: how does that benefit our economy?

When consumers want to buy films or TV shows online but find they are geo-blocked: how does that benefit the fight against piracy? How does it benefit the artists whose works they could be watching?

When lovers of old films have to physically fly to a different country to see them, even if they're no longer in commercial circulation, how does that support European culture?

When museums have to take out insurance specifically against the risk of copyright lawsuits, because it's too complex and costly to figure out - how does that help promote European heritage?

When you can't sing happy birthday, or post a picture of the Atomium, how is that fair or reasonable, how is that something you can explain to ordinary citizens?

When European scientists have to abandon text or data mining because they can't afford the legal fees - how does that help innovation and scientific progress? And by the way that restriction is costing our economy tens of billions of euros.

I see no real winners in any of those cases. Creators lose out; innovators lose out; users lose out; our economy loses out. The system serves no-one. Solve those problems and I see only winners. We just have to jump over our own shadow.

Technology moves faster than the law can, particularly in the EU.

Today, the EU copyright framework is fragmented, inflexible, and often irrelevant. It should be a stimulant to openness, innovation and creativity, not a tool for of obstruction, limitation and control.

How do you explain this to the man on the street? That's something I've really struggled with in this term as Commissioner - and in my previous term too.

Things need to change in Europe and they need to change right now. It's obvious, as other parts of the world have already seen.

In 2009, Japan introduced a copyright exception covering text and data mining: including for commercial use.

In Canada in 2012, they added an exception for non-commercial user-generated content. In none of those places has the sky fallen in. All of those places are now innovating, creating, progressing, while the EU lingers by with an ageing system for an analogue age.

Sometimes it is hard to find the middle ground between different principles, to fairly

balance different interests.

Not in this case – the solution is already staring us in the face. It doesn't even have to be about principles – it's about aligning with current practices, with what most people are already doing. These opportunities should not just be available to those who can afford expensive lawyers, or are prepared to ignore the law all together. They should be for everyone. At the least, at the very least, that is what the law can do: follow current practice. At a minimum.

Here in the EU we have done preparatory work, dialogues, public consultations, legal and economic studies. We have endlessly assessed, examined, analysed. Now it's time to act.

It is time to show that Europe can deal with the issues people care about. With the possible exception of roaming charges, our copyright rules are perhaps the greatest example, the one that most frustrate ordinary citizens. The thing you just cannot explain.

They are highly visible, highly irritating, seen by almost all as an anachronism. It's time to show Europe is capable of dealing with that frustration. Time to show Europe can be relevant, responsive, reform-minded.

What does pragmatic reform mean? It means more possibilities to access content online cross-border. It means more harmonised exceptions: benefiting researchers, teachers, cultural heritage, and user-producers. It means flexibility, so we don't have to have the same discussion every 5 years.

Just yesterday, the Commission agreed a way forward to enforce intellectual property, including copyright. We agreed that focusing on ordinary users would be heavy-handed, disproportionate, and ineffective. We agreed that new powers were not the answer either. Instead we will pursue non-legislative measures, under existing powers, focused on large-scale commercial infringements. That is the right way forward.

But even that approach to enforcement cannot stand alone. It must be accompanied by wider and significant reform. It would be highly regrettable if the current Commission could not achieve that.

But now we are also turning to a new mandate and a new generation. We have EU leaders and lawmakers committed to copyright modernisation. We have a Commission President-designate fully signed up to a digital single market.

But one thing is clear. That digital single market needs copyright reform. The essential centrepiece. Otherwise it would not be credible, it would just be words.

So I hope that work will continue seriously, and fast. And I hope that the Institution for Information Law is fully involved in that debate.

Thank you.

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